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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/610,128

07/05/2000

Bruce Kerievsky

1467.006

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02/23/2009

EXAMINER

OUELLETTE, JONATHAN P

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

02/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE KERIEVSKY

Application No. 09/610,128
Technology Center 3600

Mailed: February 23, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 4, October 2005) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed January 12, 2006 is deficient because the "Evidence Relied Upon" section fails to include the Neuhaus and Kolawa et al. references cited on page 4 in the Examiner's Answer's grounds of rejection of claims 37, 39, 43-45, 47-50, 54-56 and 58-59 under 35 U.S.C. § 103(a) and the Metz reference cited on page 6 in the Examiner's Answer's grounds of rejection of claims 40-42 and 51-53 under 35 U.S.C. § 103(a).

Appropriate correction is required.

EXAMINER'S ANSWER, MISSING SIGNATURES

An appeal conference is mandatory in all cases in which an acceptable appeal brief has been filed and a determination to move forward on appeal has been made. The participants of the appeal conference should include

(1) the examiner charged with preparation of the examiner's answer, (2) a supervisory patent examiner (SPE), and (3) another examiner, known as a conferee, having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal. On the examiner's answer, below the primary examiner's signature, the word "Conferees:" should be included, followed by the typed or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. The answer must also include the signature of a TC Director or designee to indicate that he or she approves any new grounds of rejection, if presented.

A review of the file finds that the examiner's answer is missing either at least one typed/printed name of the appeal conference participants and/or is missing at least one initial or signature to make the record clear the appeal conference was held in accordance with MPEP § 1207.01. Therefore, correction is required.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to issue a PTOL-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8);
- 2) to obtain the necessary conferee signatures and/or TC Director signature (if necessary); and
- 3) for such further action as may be required.

Application No. 09/610,128

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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